

June 10, 2008

United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd. (DE-91)
Chicago, Ill. 60604

Attn: Duncan Campbell
Environmental Protection Specialist

Re: NCP Coatings
Niles, Michigan
MID 005 167 242



401 Lincoln Way West
Osceola, IN 46561
Phone: 574-674-0161
Fax: 574-674-2778

Dear Mr. Campbell:

With regard to your May 2008 correspondence pertaining to the referenced company and the NOV issued by EPA, we are presenting the following response.

We still contend that the tank portion of the distillation process is exempt from the "hazardous wastes rules" by nature of what is being used for and why. While it could technically be considered as a hazardous waste storage tank if all the postulations of the current regulations are followed verbatim, however, we are taking a different position. In an effort to justify our position we are below responding:

- In an effort withstand the barrage of several court decisions concerning the existing regulation language to accommodate the stand we are taking regarding the mix tank portion of the distillation process, EPA has already proposed the change. Exhibit 1 displays these proposed revisions to 40 CFR 260 and 261 in 2007 and is on target for signature in July of 2008 according to Tracy Atagi (underlined in Exhibit 1) of EPA in Washington. NCP Coatings is a member of the National Paint and Coatings Association (NPCA), who is one of the participants pushing for this proposed rule to amend the definition. On June 25, 2007, the NPCA issued this rule change request to USEPA in a formal document regarding Docket ID No. RCRA – 2002 – 0031. The appropriate part of these proposed changes (there are several changes) are the issue of reclaiming versus recycling. As the proposed regulation changes contend, NCP is recycling spent virgin solvent to a condition whereby it can be used as either an additive to commercial product or a batch tank cleaning solvent.
- Exhibit 2 displays an excerpt from NCP Coatings air permit that MDEQ issued upon request which includes the subject tank as part of the unit operation referred to as the "solvent reclamation system". This excerpt was provided by Mr. Terry A. Mors, who is, and has been for a long time, NCPs air permit consultant. The initial set up of the this "system" was thought to have occurred as a result of a deceased employee negotiations with both the solid waste and air permitting sections of MDEQ. Unfortunately, his passing resulted in several missing documents and

correspondence which could have included those regarding the subject issue(s). NCP Coatings has been subject of several inspections and air permit modifications over the past years, and never once has that tank been an issue of contention regarding its implied use, and or exemptions.

Based upon the above coupled with our March 24, 2008 letter regarding this same issue, we appeal the Agency to understand that NCP Coatings has conducted the described method of recycling spent solvent to abide by part of the intention of RCRA. No matter whether one terms it recycling or reclamation, the intent to conserve in lieu of wasting as the regulations require.

We trust you will take our appeal into consideration since NCP Coatings has long been under the presumption the tank, piping & distillation unit were all exempt from the hazardous waste requirements. Additionally, we are of the opinion that the July signing of the definition changes of solid waste will accommodate our contention, and hopefully change your case against NCP Coatings.

Please consider this correspondence as our request, based upon the attached citations, for dismissal of the NOV. We look forward to your favorable response.

Regards,



Robert C. Smith, REM #05765

cc: Willie H. Harris, Chief, RCRA Branch, EPA
John Craig, MDEQ, Main Office
Nadine Deak, MDEQ, Kalamazoo District
Sherman Drew, NCP Coatings
Mike Glasgow, NCP Coatings
Don Sabbe, D&B Environmental Services, Inc.

enclosures

EXHIBIT 1

Proposed Revisions to 40 CFR Parts 260 & 261

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA-HQ-RCRA-2002-0031-FRL-8289-9]

RIN 2050-AG31

Revisions to the Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Supplemental Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a supplemental proposal which would revise the definition of solid waste to exclude certain hazardous secondary materials from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). We are also soliciting comments on regulatory factors to be used to determine whether recycling of hazardous secondary materials is legitimate. The Agency first proposed changes to the definition of solid waste on October 28, 2003 (68 FR 61558). The purpose of this proposal is to encourage safe, environmentally sound recycling and resource conservation and to respond to several court decisions concerning the definition of solid waste.

DATES: Comments must be received on or before May 25, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before

DOCKET CENTER, ROOM B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA-HQ-RCRA-2002-0031. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA-HQ-RCRA-2002-0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

<http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

(202) 506-1744, and the telephone number for the OSWER Docket is 202-566-0270.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact Marilyn Goode, Office of Solid Waste, Hazardous Waste Identification Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (703) 308-8800, (goode.marilyn@epa.gov) or Tracy Atagi, Office of Solid Waste,

Hazardous Waste Identification Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308-8672 (atagi.tracy@epa.gov).

SUPPLEMENTARY INFORMATION:

A. Regulated Entities

Entities potentially affected by this action include about 4600 facilities in 530 industries in 17 economic sectors that generate or recycle hazardous secondary materials which are currently regulated as RCRA Subtitle C hazardous wastes (e.g., industrial co-products, by-products, residues, unreacted feedstocks). About 80 percent of these affected facilities are classified in NAICS code economic sectors 31, 32, and 33 (manufacturing), and the remainder are in NAICS code economic sectors 21 (mining), 22 (utilities), 23 (construction), 42 (wholesale trade), 44 and 45 (retail trade), 48 and 49 (transportation), 51 (information), 54 (professional, scientific and technical

EXHIBIT 2

Excerpt from NCP Coatings Air Permit



Print - Close Window

To: **nonresponsive**

Subject: NCP Air Permit Information

Date: Mon, 09 Jun 2008 15:22:39 -0400

From: **nonresponsive**

Hello Bob -

Here is an excerpt from the permit application:

Support Services: The facility operates equipment and activities that support the paint and resin manufacturing operations. These activities include: solvent reclamation unit, tote/portable tank cleaner, and maintenance shop.

Solvent reclamation unit: NCP operates a wiped-film evaporator manufactured by Chicago Boiler, that is used to reclaim wash solvent that results from the paint manufacturing and resin manufacturing process. Clean solvent is used as raw material into some products, or for equipment cleaning. Solids from the wiped-film evaporator are used as a raw material in a paint product.

The wiped-film evaporator has a maximum capacity of 60 gallons. The solvent reclamation system includes an 1,800 gallon feed tank (holds the dirty solvent being fed into the wiped film evaporator), wiped-film evaporator, and receiving tote (holds the clean solvent produced by the wiped-film evaporator).

Solvent reclamation unit operates about 10 hours per day 5 days per week maximum. Solvent reclamation rate in 1999 was 1 gallon of reclaimed solvent for every 180 gallons of product manufactured.

We set up a flexible group for the support services that includes the solvent reclamation unit:

Proposed Flexible Group	Flexible Group Status	MEARS 2000			
		Reporting Group	Device	Device	Device
Paint Manufacturing	Request Active Group		EU-PAINT-MFG		
Resin Manufacturing	Request Active Group	RGRESIN-KETTLES	EU-RESIN-KETTLE1	EU-RESIN-KETTLE2	EU-RESIN-KETTLE3
Support Services	Request Active Group	RG-SOLVENT CLEAN	DV-COLD-CLEANER	DV-SOLV-RECLAIM	DV-TOTE-CLEAN
Laboratories	Exempt Equipment; Not Required	None			
Aboveground Storage Tanks	Exempt Equipment; Not Required	RGTANKS	EUTANK23 through EUTANK32		
Boilers	Exempt Equipment; Not Required	RGBOILERS	EUMAIN-BOILER	EU-RESIN-BOILER	

Not sure what else you might need.

Terry A. Mors, QEP
Senior Consultant
ERM-Midwest
734-426-0983 voice
nonresponsive

Stay informed, get connected and more with AOL on your phone.